

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Federal-State Joint Board on Universal
Service

CC Docket No. 96-45

**BELLSOUTH LONG DISTANCE, INC.
PETITION FOR WAIVER**

BellSouth Long Distance, Inc. ("BSLD"), through counsel and pursuant to Section 1.3¹ of the Commission's rules, respectfully requests that the Commission grant it a waiver of those provisions of the Commission's Universal Service Fund ("USF") rules that direct the Universal Service Administrative Company ("USAC") to use projected first quarter 2003 revenues for the 2003 annual true-up process. BSLD requests the same relief originally granted to AT&T Corp. ("AT&T"), SBC Communications Inc. ("SBC"), the Verizon telephone companies ("Verizon")² (collectively "original Petitioners" or "Petitioners"), and most recently to ALLTEL, Cincinnati Bell Wireless LLC ("Cincinnati Bell"), Cingular Wireless LLC ("Cingular"), Dobson, Manhattan Telecommunications Corporation and Metropolitan Telecommunications Inc. ("MetTel"), Nex-Tech, Inc. ("Nex-Tech"), Nextel Communications, Inc. ("Nextel"), T-Mobile

¹ 47 C.F.R. § 1.3.

² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order*, 19 FCC Rcd 13580 (2004) ("*True-Up Order*").

USA, Inc. (“T-Mobile”),³ and New Edge Network, Inc. (“New Edge”).⁴ Like the companies previously granted relief, BSLD understated projected revenues for the first quarter of 2003, thereby causing its USF obligation for all of 2003 to be overstated. The relief requested herein is necessary to ensure that BSLD contributes no more than its equitable share into the USF and is treated in a non-discriminatory manner in relation to similarly situated carriers.

I. BACKGROUND

In its 2002 *Interim Contribution Methodology Order*, the Commission made several changes to the revenue-based universal service assessment system.⁵ Among other things, the Commission adopted a new method of calculating a service provider’s contributions to the USF based on projected end-user interstate revenues, rather than using the previous basis of historical revenues.⁶ The new projected revenue-based mechanism took effect on April 1, 2003. In order to provide the USAC with a full year of projected revenues, the Commission required contributors to report projected revenues for the first quarter of 2003. In order to adjust for

³ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order*, DA 04-3903 (Wireline Competition Bureau rel. Dec. 17, 2004) (“*Second True-Up Order*”).

⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order*, DA 05-306 (Wireline Competition Bureau rel. Feb. 3, 2005) (“*Third True-Up Order*”).

⁵ *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116 & 98-170, NSD File No. L-00-72, *Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952 (2002) (“*Interim Contribution Methodology Order*”).

⁶ *Id.* at 24969, ¶ 29.

errors in revenue projections, the Commission also established an annual true-up process to ensure that carriers neither over- nor under-contributed to the USF.⁷

The Commission later refined this true-up process in its *Reconsideration Order* to account for the transition to the new contribution methodology.⁸ Because carriers' contributions were based on projected revenues for only part of the year, the Commission had to establish a unique true-up mechanism for 2003 to account for the fact that the carriers were relying on historical revenues in the first quarter. In its *Reconsideration Order*, the Commission stated:

USAC will subtract revenues projected for the first quarter of 2003 from annual revenues reported on the FCC Form 499-A to arrive at an estimate of a contributor's actual revenues for the second through fourth quarters of 2003. USAC will then compare this amount to the sum of revenues projected for the second through fourth quarters of 2003 to determine whether a refund or collection is appropriate.⁹

In early 2004, AT&T, SBC, and Verizon requested waivers of the universal service true-up process defined in the *Reconsideration Order*.¹⁰ These original Petitioners requested permission to revise their first quarter projections and substitute their actual interstate and

⁷ *Id.* at 24972, ¶ 36.

⁸ *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116 & 98-170, NSD File No. L-00-72, *Order and Second Order on Reconsideration*, 18 FCC Rcd 4818, 4823-25, ¶¶ 13-18 (2003) (“*Reconsideration Order*”).

⁹ *Id.* at 4824-25, ¶ 17.

¹⁰ AT&T Petition for Waiver, CC Docket No. 96-45 (filed Jan. 27, 2004); SBC Petition for Waiver, CC Docket No. 96-45 (filed Feb. 27, 2004); Verizon Petition for Waiver, CC Docket No. 96-45 (filed Feb. 27, 2004).

international revenues for that quarter. They argued that, unless their requests were granted, they would be forced to pay true-up amounts in excess of their appropriate contributions for the second through fourth quarters of 2003. By under-projecting their first quarter 2003 revenues, they further argued that their revenue amounts for the remainder of the year (*i.e.*, those amounts used to calculate their USF contributions) were artificially and erroneously inflated.

On July 20, 2004, the Commission granted, in part, the waiver requests of AT&T, SBC, and Verizon in its *True-Up Order*.¹¹ In that order, the Commission noted that Section 254 of the Act “requires that interstate telecommunications providers contribute to the universal service mechanisms on an *equitable and nondiscriminatory basis*.”¹² It further noted that, “[c]onsistent with section 254 of the Act, the purpose of the annual true-up process is to ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms.”¹³ Because the revised true-up procedures led the Petitioners to contribute more than their equitable share to the USF, the Commission found that the Petitioners had demonstrated special circumstances warranting deviation from the rules. The Commission further held that grant of the waiver was in the public interest because first quarter 2003 revenues (as distinguished from projected revenues) were not used in calculating their USF contributions.¹⁴ In waiving the true-up procedures for 2003, the Commission adopted an alternative methodology to that proposed by the Petitioners to determine an appropriate contribution:

¹¹ *True-Up Order*, 19 FCC Rcd at 13580, ¶ 1.

¹² *Id.* at 13582, ¶ 7 (emphasis added).

¹³ *Id.*

¹⁴ *Id.*

We direct the Administrator to subtract Petitioners' historical gross billed revenues for first quarter 2003 reported on their Form 499-Qs, adjusted to reflect their annual collectible rates for 2003 reported on their Form 499-As, when conducting true-ups for the Petitioners. Although these amounts may not precisely equal the Petitioners' collected revenues for the quarter, they will yield significantly more accurate true-up results than would their projections.¹⁵

Although the Commission denied requests to extend this relief to all similarly situated carriers, the Commission invited carriers to file individually for similar relief, and stated that such petitions "would be evaluated consistent with the precedent established in this Order."¹⁶

Consequently, a number of service providers filed similar waiver requests subsequent to the release of the *True-Up Order*.¹⁷ On December 17, 2004 and February 3, 2005, the Wireline Competition Bureau granted nine additional petitioners the same relief originally sought and received by AT&T, SBC, and Verizon.¹⁸

II. GRANT OF THE WAIVER REQUEST IS WARRANTED AND WILL SERVE THE PUBLIC INTEREST.

BSLD respectfully requests that the Commission grant its waiver petition and direct the USAC to apply the same true-up methodology applied in its previous orders so as to ensure that

¹⁵ *Id.* at 13583, ¶ 8.

¹⁶ *Id.* at 13582, n. 15.

¹⁷ *See, e.g.*, ALLTEL Petition for Waiver, CC Docket No. 96-45 (filed Aug. 20, 2004); Cincinnati Bell Wireless LLC Petition for Waiver, CC Docket No. 96-45 (filed Aug. 11, 2004), supplemented on Oct. 1, 2004; Cingular Wireless LLC Petition for Waiver, CC Docket No. 96-45 (filed July 26, 2004); Dobson Petition for Waiver, CC Docket No. 96-45 (filed Sept. 14, 2004); Manhattan Telecommunications Corporation and Metropolitan Telecommunications Holding Company Petition for Waiver, CC Docket No. 96-45 (filed Aug. 30, 2004); Nex-Tech, Inc. Petition for Waiver, CC Docket No. 96-45 (filed Oct. 12, 2004); Nextel Communications, Inc. Petition for Waiver, CC Docket No. 96-45 (filed Aug. 27, 2004); T-Mobile USA, Inc. Petition for Waiver, CC Docket No. 96-45 (filed Sept. 27, 2004).

¹⁸ *See Second True-Up Order; Third True-Up Order, supra* notes 3 and 4.

BSLD pays its equitable and appropriate share of universal service support. As the Commission noted in the initial *True-Up Order*, Section 254 of the Act requires that “interstate telecommunications providers contribute to the universal service mechanisms on an equitable and nondiscriminatory basis.”¹⁹ Under this framework, the purpose of the annual true-up should be to “ensure that interstate telecommunications providers contribute appropriate amounts to the universal service mechanisms.”²⁰

BSLD faces the same circumstances as the prior Petitioners. Like AT&T, SBC, Verizon, ALLTEL, Cincinnati Bell, Cingular, and the other petitioners, BSLD’s actual collected revenues exceeded its projections of collected revenues for first quarter 2003. Consequently, in the absence of a waiver, BSLD will have contributed approximately \$1.2 million more than its equitable share to the USF.²¹ Under these circumstances, it is in the public interest to grant the waiver request. BSLD is entitled to the same relief as that afforded to prior petitioners. Failure to do so would treat BSLD in a non-equitable and discriminatory manner in comparison with other providers granted relief under the exact same circumstances. Such an outcome would be patently unfair, discriminatory, violative of Section 254 of the Act, and contrary to Commission precedent. Accordingly, BSLD respectfully requests that the Commission extend the relief granted in the *True-Up Orders* to BSLD and direct the USAC to true-up BSLD’s 2003 revenues according to the methodology applied in those orders.

¹⁹ *True-Up Order*, 19 FCC Rcd at 13582, ¶ 7.

²⁰ *Reconsideration Order*, 18 FCC Rcd at 4824, ¶ 15.

²¹ It should be noted that BSLD submitted a revised Form 499-A on December 22, 2004 that increased its universal service contributions. The \$1.2 million overpayment referenced above was calculated based upon the revised Form 499-A.

III. CONCLUSION

For all of the foregoing reasons, BSLD urges the Commission grant the waiver requested herein.

Respectfully submitted,

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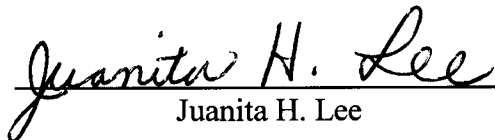
February 28, 2005

CERTIFICATE OF SERVICE

I do hereby certify that I have this 28th day of February 2005 served the following parties to this action with a copy of the foregoing **PETITION FOR WAIVER** by electronic filing to the parties listed below.

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